

§ 399.86

carrier's website that lists the differences in policies among code-share partners.

(f) The Department considers the failure to give the appropriate notice described in paragraphs (a) through (e) of this section to be an unfair and deceptive practice within the meaning of 49 U.S.C. 41712.

[Doc. No. DOT-OST-2010-0140, 76 FR 23166, Apr. 25, 2011]

EFFECTIVE DATE NOTE: At 76 FR 23166, Apr. 25, 2011, § 399.85 was added, effective Aug. 23, 2011. The effective date of § 399.85(b) and (c) was delayed until Jan. 24, 2012 at 76 FR 45181, July 28, 2011.

§ 399.86 Payments for non-air transportation services for air cargo.

The Board considers that payments by air carriers and foreign air carriers to shippers, indirect air carriers, or foreign indirect air carriers for non-air transportation preparation of air cargo shipments are for services ancillary to the air transportation, and are not prohibited under section 403 of the Act.

[PS-86, 44 FR 45609, Aug. 3, 1979]

§ 399.87 Baggage allowances and fees.

For passengers whose ultimate ticketed origin or destination is a U.S. point, U.S. and foreign carriers must apply the baggage allowances and fees that apply at the beginning of a passenger's itinerary throughout his or her entire itinerary. In the case of code-share flights that form part of an itinerary whose ultimate ticketed origin or destination is a U.S. point, U.S. and foreign carriers must apply the baggage allowances and fees of the marketing carrier throughout the itinerary to the extent that they differ from those of any operating carrier.

[Doc. No. DOT-OST-2010-0140, 76 FR 23167, Apr. 25, 2011]

EFFECTIVE DATE NOTE: At 76 FR 23167, Apr. 25, 2011, § 399.87 was added, effective Aug. 23, 2011. The effective date was subsequently delayed to Jan. 24, 2012 at 76 FR 45181, July 28, 2011.

§ 399.88 Prohibition on post-purchase price increase.

(a) It is an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 for any seller of scheduled air

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transportation within, to or from the United States, or of a tour (i.e., a combination of air transportation and ground or cruise accommodations), or tour component (e.g., a hotel stay) that includes scheduled air transportation within, to or from the United States, to increase the price of that air transportation, tour or tour component to a consumer, including but not limited to an increase in the price of the seat, an increase in the price for the carriage of passenger baggage, or an increase in an applicable fuel surcharge, after the air transportation has been purchased by the consumer, except in the case of an increase in a government-imposed tax or fee. A purchase is deemed to have occurred when the full amount agreed upon has been paid by the consumer.

(b) A seller of scheduled air transportation within, to or from the United States or a tour (i.e., a combination of air transportation and ground or cruise accommodations), or tour component (e.g., a hotel stay) that includes scheduled air transportation within, to or from the United States, must notify a consumer of the potential for a post-purchase price increase due to an increase in a government-imposed tax or fee and must obtain the consumer's written consent to the potential for such an increase prior to purchase of the scheduled air transportation, tour or tour component that includes scheduled air transportation. Imposition of any such increase without providing the consumer the appropriate notice and without obtaining his or her written consent of the potential increase constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. 41712.

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§ 399.89 Disclosure of potential for price increase before payment.

Any seller of scheduled air transportation within, to or from the United States, or of a tour (i.e., a combination of air transportation and ground or

cruise accommodations), or tour component (e.g., a hotel stay) that includes scheduled air transportation within, to or from the United States, must notify a consumer of the potential for a price increase that could take place prior to the time that the full amount agreed upon has been paid by the consumer, including but not limited to an increase in the price of the seat, an increase in the price for the carriage of passenger baggage, an increase in an applicable fuel surcharge, or an increase in a government-imposed tax or fee and must obtain the consumer's written consent to the potential for such an increase prior to accepting any payment for the scheduled air transportation, or tour or tour component that includes scheduled air transportation. Imposition of any such increase without providing the consumer the appropriate notice and obtaining his or her written consent to the potential increase constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. 41712.

[Doc. No. DOT-OST-2010-0140, 76 FR 23167, Apr. 25, 2011]

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Subpart H—Other Policies Relating to Interests, Activities, and Relationships of Air Carriers

§ 399.91 Air carrier participation in programs of technical assistance to airlines of less developed countries.

(a) *Applicability.* This policy shall apply to proceedings under sections 408, 409, and 412 of the Act in which the Board is required to make any determination as to the public interest or consistency with the Act of any agreement or relationship sought to be entered into by an air carrier, or officer or director thereof, with a foreign airline in connection with the performance of some activity pursuant to a technical assistance contract financed by an agency of the U.S. Government.

(b) *Policy.* It is the policy of the Board that all U.S. air carriers interested in performing contracts for aviation technical assistance to foreign air-

lines should have equal access to information necessary to bid on such contracts, and should be given equal consideration thereafter in the award of such contracts based upon customary contracting criteria and subject to the considerations set forth below:

(1) The air carrier selected should possess the necessary technical and managerial skills and economic strength to perform the assigned task in the recipient country to the credit of the United States. Where familiarity with the particular language and culture of the recipient country are important to the success of the project, weight should be given to the capabilities of all interested carriers in this regard, including particularly those which a route carrier may have acquired through service to the country or area.

(2) Where a single U.S. route carrier is serving or is certificated to serve the recipient country or the region in which it is located, and where initiation or continued operation of the route by such carrier is an important national interest objective of the United States, weight should be given to any evidence that an award of the contract to the route carrier as opposed to any other U.S. carrier would be held to achieve this objective.

(3) An air carrier performing a technical assistance contract will necessarily occupy a close special relationship with the airline and government of the recipient country. Over and above the terms of any specific contract, there is latent in such relationship the possibility of a relative preference for such carrier over a competing U.S. air carrier in matters of interline traffic, governmental restrictions, etc. Accordingly, where more than one U.S. route carrier is certificated to serve the recipient country and more than one such carrier wishes to perform the technical assistance, none of such carriers should be awarded the contract over the objection of any other except under very unusual circumstances.

(4) Technical assistance contracts should contain realistic objectives and require competent performance at reasonable cost and within a reasonable